

State of Utah

Title and Escrow Commission Meeting

Meeting Information

Date **June 14, 2006** Time **8:00 to Noon** Place **Room 4112, State Office Bldg**

Members

Commission Members

(Attendees = x)

x Chairperson, Joyce W. Clark, *Washington* x Darwin L. Johnson, *Wasatch*
x David M. Lattin, *Salt Lake* x Glen W. Roberts, *Utah* x R. Curt Webb, *Cache*

Department Staff

(Attendees = x)

x John E. "Mickey" Braun, Jr. <i>Ass't Commissioner</i>	x Perri Babalis <i>AG Legal Counsel</i>	x Jilene Whitby <i>PIO/Recorder</i>	x Darrel Powell <i>Dir. Market Conduct</i>
x Gerri Jones <i>MC Examiner</i>	Sheila Curtis <i>MC Examiner</i>	Brad Tibbitts <i>Dir. Life & P&C</i>	x Gale Lemmon <i>AG Prosecutor</i>

Public

Jack Marinello

Minutes

- I. **Welcome and Introductions** / Chair - Joyce Clark
Joyce began the meeting at 8:12 a.m. She welcomed Jack Marinello, a visitor, and excused Sheila, who was attending a title class.
- II. **Adoption of Minutes of Previous Meeting**
Darwin made a motion to accept the minutes, David seconded the motion and the vote was unanimous in its favor.
- III. **Review & Concur with Licensee Report**
Mickey reported that he had submitted a request for members of the Commission to receive C.E. credit for their time in committee work. Curt moved to approve this action and Darwin seconded it. The vote was unanimous in its favor.
- IV. **Review & Concur with Enforcement Case Report** / Gale Lemmon
 - First Southwestern Title employed two people guilty of bank larceny. It is a felony to knowingly hire someone with a criminal record. The order included a forfeiture of \$110,000 and a probation of 12 months. \$82,350 was stayed if the balance of \$27,650 was paid within 15 days of the date of the order. The agency claimed they did not know about the law. They have agencies in 9 states. License revocation was not considered because the agency had no prior history of complaints or administrative actions. The agency did know that the employees were felons. Curt made the motion to concur with the department's actions. Darwin seconded the motion. All but Glen voted in favor of the motion.
 - Joyce stated that a former licensee was working in the title industry. She said that she thought that this licensee was barred from working in the industry. Mickey said the department would check into it and report back at the next meeting.
- V. **Old Business**
 - **Accomplishment over the past year.**
 - o Joyce reflected on accomplishments of the past year. She felt the Commission was spinning their wheels. No action had been taken on flips and the fiduciary rule. They had done nothing to improve the industry. "We have turned complaints in but have seen no results," she said. "What were we appointed for?"

- o Curt suggested they be careful about how they measure success. Sometimes the measurement of progress is not in how much regulation is passed but by less regulation. Sometimes the voices from industry are not the voices of the majority. The market is capable of taking care of itself.
- o Joyce wondered if they were letting outside interests influence them?
- o Glen expressed frustration as well. We need to be concerned about the state of the title industry. We need to do something before the federal government does. How can we make market conduct more effective? Mickey said that the Commission had taken the heat off the department.
- o Darwin asked if there was anything they could do to get more help for the department? Mickey said that the question was, "Are we focusing on the right things?" Are the current statutes and rules too focused on less important marketing issues?
- o Glen suggested setting goals.
- o Joyce suggested letting the majority rule rather than waiting for consensus.
- o David stated that they were not representatives of the industry but appointed because of their integrity. Decisions needed to be made, whether or not there is consensus. They were to decide what is best for the industry and public. He expressed concern that Utah was the only state using split closings. Utah is the fraud capitol of the country. As long as doors are open for fraud, crooks will come. We don't need to wait for the problems before closing the doors. Take a stand.
- o Perri suggested prioritizing topics and resolving each one before taking on a new one. David said the industry was probably expecting us to set the standard.
- o Glen noted that New Mexico's rates were under attack. Our escrow rates are the highest around. We need to be proactive. Jack asked if this report reflected our title premiums? We are close to the bottom on escrow fees.
- **Listing of issues to address**
 - o Fiduciary rule
 - o Flips
 - o Controlled business statute \ Affiliated business concerns
 - o Industrial banks
 - o Notaries
 - o Reviewing title rules
 - o Enforcement
 - o Dedicate money for the department
 - o Inducements
 - o Model Title Act
 - o Rates or fees – should they be regulated?
- **Prioritizing of Issues for Commission to address**
 - #1 Fiduciary
 - #2 Flips
 - #3 Enforcement – not enough of it
 - #4 Controlled business
 - o The Title Model Act will apply to all of these.
 - o Glen noted that they have authority to make a rule about fiduciaries.
 - o Darwin made the motion to approve the list of priorities and Glen seconded it. The vote was unanimous.
 - o Curt said they should listen to anyone who wishes to address the Commission, regardless of topic.
 - o Glen suggested tackling one issue at a time until finished. All agreed.
- **New Meeting Time**

Glen made the motion to begin meetings at 8 a.m., Darwin seconded it and the vote was unanimous in favor of the motion.

- **Class outline: Set dates, assignments & notify ULTA / Glen**

Glen reported their class had been approved and given 2 hours of C.E. credit. The mortgage portion still needs to be approved. Contact the regional vice president in your area to set up the class. He will email the power point presentation to each member. David was encouraged to attend the ULTA convention.

- **Update Escrow Filing Rules R592-3 & 4**

The comment period ends July 12, 2006. So far no comments have been received.

- **Traveling Notary**

- **Fiduciary Rule**

- Prior to the meeting Commission members were sent the current fiduciary rule, R590-170, Fiduciary and Trust Account Obligations, and two revised drafts of the rule. The drafts deal more with title and escrow. Joyce asked Perri if she could put language in it about split closings. Gerri said it was already in it. Perri said they had the authority to write the rule. Glen suggested starting with the original.
- Curt did not think there was justification for the rule, especially since underwriters can't agree. He felt that the return of \$50 of one company is not a kickback but a reduction in premium because of reduction in risk.
- Glen: "How is the buyers interest protected?" We have a third party not involved in the discussion. We need to do something to establish a single fiduciary. It allows us to do less work for the same amount of money.
- Jack noted that the real estate contract has no place on the contract for the principal to specify who is to handle the insurance and the settlement. This needs to be changed so the principal and not the realtor can make these decisions. How is the concurrent rate justified when you don't issue both policies? Could a rule be written to require this?
- Glen noted that the Legislature said fees must be consistent with costs. If the buyer and seller are both doing searches work is not reduced. Maybe discounts should not be allowed unless you do both searches.
- Darwin asked what had happened to reduce rates when a copy of the prior policy was available? Glen said reduced rates were authorized in underwriting manuals. Lower rates were justified because searches were done from the date of the policy forward. Curt asked how you draw a time limit for concurrent rates. That is why splits work. This same logic works for closings. The closer the policy is issued to the date of the buy-sell transaction the less risk and time is needed for searches. Cost could be zero. Should we be giving discounts just because one has a copy of the previous policy? Discounts should be allowed if closing separately. Jack agreed. How many would give us a reissue rate and receive a concurrent rate if they issued both contracts? Splits would go away if that were the case. You might have to give up reissue rates on all policies. Joyce noted that copies of previous policies were no longer required. Gerri could only see this applying to an owner's policy. Curt – If you say you can't get a discount unless you issued prior policy then new start up companies would not have any business. Glen: "Define what a policy is." One often has a title policy in hand before the title search is done. Jack: "Are you okay with a reissue rate as long as you can prove a policy was issued previously?"
- Glen proposed that we make a motion to work on the concurrent rate rule. David seconded the motion and Curt opposed it.
- Discussion: Perri asked how they could reduce rates if they don't set them? Gerri noted that title companies are required to file rates. Curt: "Define concurrent rate?" Darwin thought they were issued within 6 months. Glen said Washington State had good language in their law. He would get it for the next meeting. Curt: "A concurrent issue is issued within the same transaction." Glen suggested seeing what other states are charging on such transactions. Curt: "Define 'Reissue'." Jack asked how you spread the discount over owner and lender policy? Glen said the Washington statute addresses the reduction

in amounts. We may need to define "prior evidence." Joyce asked him to send the language to Jilene and she will send it to everyone. Jack said there was a lot of pressure on underwriters to review rates. The Iowa plan is being reviewed closely now. Glen noted that if lenders have enough money to share with builders and lenders then the rates are too high. We need to be proactive. Gerri said that if premium dollars were reduced then it would affect the escrow. Jack said title is not supposed to subsidize escrow. Title fees would go down and escrow fees would go up. We should be charging appropriate rate for each.

- Glen suggested ending the discussion till next meeting. Curt said that they were not addressing the fiduciary rule. Do we have power to address underwriters? Perri said the department did. Curt said that the Commission could recommend that the department determine if underwriters are in compliance with the rate standards addressed in 31A-19a-209(1)(b). The Commission has the power to establish rates and the commissioner has the power to enforce them. Mickey said 31A-19a-209 sets standards for the commissioner to look at rates for equity and nondiscrimination. The department typically does not get involved in rate competition.
- Curt suggested they define "concurrent rate." All agreed. Glen proposed that the department prepare a draft.

VI. New Business

None

VII. Other Business from Committee Members

VIII. Reminder: Liaison Meeting, Monday, July 10, 3pm. Glen volunteered to attend. Curt will also be there. The convention is July 14.

IX. Adjourn

Glen moved to adjourn at 10:37a.m. David seconded the motion. The vote was unanimous.

Next Meetings

9:30 a.m.

January 11, 2006	July 12, 2006
February 8, 2006	August 9, 2006
March 2, 2006	September 13, 2006
April 12, 2006	October 11, 2006
May 10, 2006	November 8, 2006
June 14, 2006	December 13, 2006